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PATENT  
03821-P0160A GSW/DC

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant	David C. Issler
Serial No. 10/820,110	Filing Date: April 7, 2004
Title of Application:	One-Piece Shoe Construction With Improved Ventilation
Confirmation No. 8407	Art Unit: 3728
Examiner	Currently not assigned

Commissioner for Patents  
Post Office Box 1450  
Alexandria, VA 22313-1450  
ATTENTION: Group Director, Art Unit 3728  
(M.P.E.P. § 1002.02(C))

**Petition to Make Special pursuant to (M.P.E.P. § 708.02, III)**

1. Petition. Applicant hereby petitions to make this new application, which has not received any examination by the Examiner, special. It has come to the Applicant's knowledge that there is an infringing device actually on the market.

2. Statement. Pursuant to Section 708.02 II of the Manual of Patent Examining Procedure, the undersigned attorneys hereby submit the following statement in support of the Petition to Make Special.

(A) There is an infringing device currently and actually on the market. The infringing device is a Rockers shoe produced by Cherokee. (B) In support of the fact that the infringing device is actually on the market, Applicant purchased the Rockers shoe from a retail store and photographs of the Rockers shoe are attached showing front, side, bottom, top, and rear views as well as the underside of the footbed and top surface of the outsole (see Appendix A). The product was ordered and purchased by a regular sales activity in the U.S.

Mailing Certificate: I hereby certify that this correspondence is today being deposited with the U.S. Postal Service as *First Class Mail* in an envelope addressed to: Commissioner for Patents and Trademarks; Post Office Box 1450; Alexandria, VA 22313-1450.

August 26, 2004

Jadira De la Torre  
Jadira N. De La Torre

(C) A rigid comparison of the infringing device with the claims of the application has been made, and that in our opinion, at least some of the claims are infringed. Independent claims 1 and 13 plus dependent claims 2, 6, 7, 8, 14, 15, and 19 of the application are infringed by the infringing device.

In particular, as clearly illustrated in the attached photographs, the infringing device has a sole having a top surface with a plurality of notches, an upper integrally formed with the sole, a footbed having a bottom surface with a plurality of channels and being removably placed on the top surface of the sole, and the plurality of channels are in communication with the plurality of notches for venting the shoe. All of which are recited in independent claim 1.

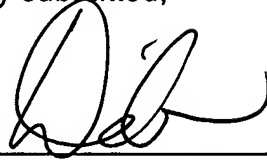
Also, the infringing device has a sole having a top surface, upper with a toe area and a heel area and being integrally formed with the sole, the toe area extending around a localized periphery of the top surface and extending upwardly away from the top surface for securing the shoe to a user's toe, and the heel area extending around a localized periphery of the top surface and extending upwardly away from the top surface for securing the shoe to a user's heel. All of which are recited in independent claim 13.

(D) A careful and thorough search of the prior art has been made by a professional searcher in the following field of search, i.e., in Class 12, subclasses 142R and 142V; Class 36, subclasses 3B, 3R, 28 and 29 and Class 264, subclass 244 and on computer using ESPACENET (EPO) and the PTO EAST/WEST databases.

3. Copy of References. There is submitted herewith a copy of the references deemed most closely related to the subject matter encompassed by the claims. Also attached is a copy of the Information Disclosure Statement with the texts of the cited art (previously file to the PTO).

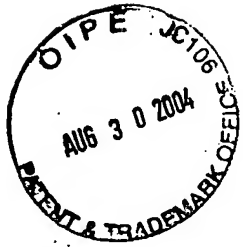
4. Fee. The fee required by 37 C.F.R. 1.17(i) in the amount of \$130.00 is enclosed herewith. Please charge any fee deficiency to Account No. 19-4516.

Respectfully submitted,



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COPY

PATENT  
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant	David C. Issler
Serial No. - Pending	Filing Date: April <u>7</u> , 2004
Title of Application:	One Piece Shoe Construction With Improved Ventilation

Commissioner for Patents  
Post Office Box 1450  
Alexandria, VA 22313-1450

**Information Disclosure Statement by Applicant**

Dear Sir:

As a means of complying with the duty of disclosure set forth in 37 CFR §1.56, Applicant lists the following references (copies of the listed patents and papers enclosed).

U.S. Patent Documents				
Exam. Initials	Class/ Subclass.	Document No.	Date	Name
	36/2.5J	3,729,840	05/01/73	Famolare, Jr.
	36/2 R	3,769,722	11/06/73	Rhee
	36/114	4,132,016	01/02/79	Vaccari
	36/3 B	4,408,401	10/11/83	Seidel <i>et al.</i>

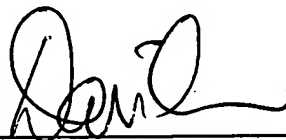
COPY

U.S. Patent Documents				
Exam. Initials	Class/ Subclass.	Document No.	Date	Name
	12/142 V	4,476,600	10/16/84	Seidel <i>et al.</i>
	36/117	4,505,056	03/19/85	Beneteau
	425/129 S	4,505,660	03/19/85	Seidel <i>et al.</i>
	36/3 R	4,742,625	03/10/88	Sydor <i>et al.</i>
	36/101	5,083,385	01/28/92	Halford
	36/3 A	5,369,895	12/06/94	Hammerschmidt

The listed patents pertain in a general way to the subject matter of the application, but are not necessarily considered to be analogous prior art.

Respectfully submitted,

April 7, 2004



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\_\_\_\_\_  
Date Considered

\_\_\_\_\_  
Examiner